

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Theoda Dunn District 2, Map 81B, Group A, Control Map 81B, Parcels 4 and 11, Special Interest 000 Residential Property Tax years 1999, 2000, 2001, 2002, 2003, 2004))))))	Henderson County
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INITIAL DECISION AND ORDER

Statement of the Case

On April 11, 2005, the State Board of Equalization ("State Board") received the above-styled appeals by Theoda Dunn, the current owner of the subject parcels.¹ According to his statements on the appeal forms, Mr. Dunn acquired these properties on August 25, 1999.

The undersigned administrative judge conducted a jurisdictional hearing relative to this matter on May 11, 2006 in Jackson.² The appellant was represented by Danny R. Ellis, Esq., of Mueller and Ellis, P.L.C. (Jackson). Henderson County Assessor of Property Danny Garner appeared on his own behalf. Also in attendance at the hearing was Ray Weatherly, of the State Division of Property Assessments.

Findings of Fact and Conclusions of Law

The parcels in question are lot numbers 103 and 110 in the "West Pointe" subdivision of Lexington. Mr. Dunn purchased these properties with the intention of erecting a residence on them. Unfortunately, due to his inability to obtain the required building permit, the lots have remained undeveloped.³

In none of the tax years under appeal did Mr. Dunn contest the valuation of the subject properties before the Henderson County Board of Equalization ("county board").⁴ Further, the assessed values of these properties were indicated on the 1999 through 2004 tax bills – all of which were paid without protest. But according to the taxpayer's testimony at the hearing, he was unaware (until now) of the prescribed deadlines for making complaint to the county board.⁵

¹The mailed appeals are deemed to have been filed on the postmark date of April 8, 2005.

²In a letter to the appellant dated April 14, 2005, State Board Executive Secretary Kelsie Jones had opined that "it is too late to appeal assessments to this office for (tax years 1999-2004)" and that "[t]he assessments for 1999-2004 have become final." Nashville attorney Lucille F. Bond (of Blackburn & McCune, P.L.L.C.), responding on Mr. Dunn's behalf, requested reconsideration in her letter of June 6, 2005.

³Apparently, the developer of this subdivision is embroiled in litigation with the city regarding certain site improvements.

⁴In 2005, a year of reappraisal in Henderson County, the appraised values of the subject lots were reduced to undisputed amounts.

⁵See Tenn. Code Ann. section 67-5-508(a).

Mr. Dunn sought relief on the basis of the subject lots' ostensible lack of utility for residential purposes.

Generally, except in the event of insufficient notice of a change in classification and/or valuation, a property assessment which is not appealed to the county board of equalization during its regular annual session becomes final. See Tenn. Code Ann. sections 67-5-1401 and 67-5-1412(b). In 1991, the General Assembly amended the law by affording a taxpayer the opportunity for a hearing before the State Board to demonstrate "reasonable cause" for failure to appeal the property in question to the county board of equalization (or for failure to appeal to the State Board in a timely manner). However, the State Board is only empowered to accept an appeal pursuant to the reasonable cause amendment until March 1 of the year following the tax year in dispute. Even with respect to the most recent tax year (2004), then, these direct appeals were untimely under the terms of Tenn. Code Ann. section 67-5-1412(e).⁶

Counsel for the appellant posited that the State Board could redress his grievance on "equitable" grounds. Yet, as an administrative agency, the State Board's powers are limited to those delegated by the legislature. Thus, for example, in Trustees of Church of Christ (Obion County, Final Decision and Order, February 9, 1993), the Assessment Appeals Commission declined to backdate a church's claim of property tax exemption under Tenn. Code Ann. section 67-5-212 on the following rationale:

There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however.

Id. at p. 2. See also Tenn. Atty Gen. Op. 92-62 (October 8, 1992).

Order

It is, therefore, ORDERED that these appeals be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within**

⁶It should also be noted that, since Mr. Dunn did not become the owner of the subject lots until August, 1999, he would probably have lacked standing to protest the assessments of these properties for that tax year. See Tenn. Code Ann. section 67-5-502(a)(1).

thirty (30) days from the date the initial decision is sent.” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

- 2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 19th day of May, 2006.

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Danny R. Ellis, Esq., Mueller and Ellis, P.L.C.
Danny Garner, Henderson County Assessor of Property

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